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# Evolving International Law for the Protection of Art

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# **Evolving International Law For the Protection of Art**

The 1970's have seen a phenomenal growth of both private and public art collections in North Carolina as well as in the rest of the nation. The opening of the new Duke Museum of Art, the growth of the collections at the Ackland Museum in Chapel Hill and the state-supported North Carolina Museum of Art in Raleigh bear witness to the increasing artistic wealth of this area. Since much of this art must make its way here in international trade, it should be useful for private collectors and museum curators to have knowledge of the international law concerning the art trade.

This comment is an overview of the international legal framework established for the protection of art, both the laws now in force<sup>1</sup> and those proposed and under consideration. This discussion surveys the laws of warfare for the protection of art, as well as international attempts to prohibit the illicit trade in stolen art. The laws of warfare are included for the sake of completeness and in order to provide a basic awareness of these laws to archaeologists and others who may be working in countries where a knowledge of the laws of warfare may suddenly become useful.

## *The Laws of Warfare*

Throughout history there has been one international law of war concerning art: to the victor belongs the spoils. From Xerxes' theft of statuary from Athens in the fifth century B.C. down to Napoleon's systematic robbery of the art of all Europe, this law was in full force.<sup>2</sup>

In the late nineteenth century voices in the nations of the West began to call for a civilizing of warfare. There was concern about all unnecessary destruction, including that of art. This concern resulted in the Hague Conventions on the Laws of War. These 1907 Hague Conventions, to which the United States is a party, outlaw the seizure, destruction or wilful damaging of works of art, historic monuments, and institutions dedicated to the arts.<sup>3</sup> They prohibit the pillage of towns even when taken by assault.<sup>4</sup> They provide that in sieges and bombardments all necessary measures are to be taken to spare, as far as possible, historic monuments and buildings dedicated to art.<sup>5</sup>

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<sup>1</sup> As of February, 1977.

<sup>2</sup> PAUSANIAS, DESCRIPTION OF GREECE 1.8.5. Quynn, *The Art Confiscations of the Napoleonic Wars*, 50 AM. HIST. REV. 437 (1945).

<sup>3</sup> Convention with Other Powers Respecting the Laws and Customs of War on Land, Oct. 18, 1907, annex art. 56, 36 Stat. 2277, T.S. No. 539.

<sup>4</sup> *Id.*, art. 28.

<sup>5</sup> *Id.*, art. 27.

Provision is made for special markers to be set up by inhabitants to indicate such protected places.<sup>6</sup>

These rules seem to have had little effect on the combatants in World War I. An example of the failure to observe the rules was the burning of the medieval city, university and library of Louvain in Belgium by the Germans in 1914 when the presence of snipers was suspected by the occupying troops.<sup>7</sup>

After World War I, the United States made a second attempt to prevent unnecessary destruction of art by joining with certain other American states in the so-called Roerich Pact or Treaty on the Protection of Artistic and Scientific Institutions and Historic Monuments of 15 April, 1935.<sup>8</sup> This pact accords a neutralized and protected status to historic monuments, museums, and scientific, artistic, educational and cultural institutions in the event of war between the signatory powers.

World War II brought the most blatant, wholesale and systematic plunder of art in history. In January, 1940, Hitler appointed Reichsleiter Rosenberg to head the Center for National Socialist Ideological and Educational Research. Known thereafter as "Einsatzstab Rosenberg," the organization began operations on an enormous scale. Originally designed to establish a research library, the mission of Einsatzstab Rosenberg became the looting of the cultural treasures of nearly all Europe. Colonel Storey eloquently described this project during the Nuremberg trials:

To obtain a full conception of the vastness of this looting program, it will be necessary to envision Europe as a treasure-house in which is stored the major portion of the artistic and literary product of two thousand years of Western civilization. It will further be necessary to envision the forcing of this treasure-house by a horde of vandals bent on systematically removing to the Reich these treasures, which are, in a sense, the heritage of all of us, to keep them there for the enjoyment and enlightenment of Germans alone. Unique in history, this art-seizure program staggers one's imagination and challenges one's credulity.<sup>9</sup>

For example, from March, 1941 to July, 1944, the special staff for pictorial art alone brought into Germany twenty-nine large shipments, including 137 freight cars with 4,174 cases of art works. The highest German authorities took a special interest in this program. Reich Marshal Goering, in November, 1940, directed the Military Administration in Paris and the Einsatzstab Rosenberg to dispose of art objects brought to the Louvre in the following priority:

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<sup>6</sup> Convention Concerning Bombardment of Naval Forces in Time of War, Oct. 18, 1907, art. 5, para. 2, 36 Stat. 2351, T.S. No. 542.

<sup>7</sup> B. TUCHMAN, *THE GUNS OF AUGUST* 318-22 (1962).

<sup>8</sup> 49 Stat. 3267 (1935).

<sup>9</sup> IV TRIAL OF THE MAJOR WAR CRIMINALS BEFORE THE INTERNATIONAL MILITARY TRIBUNAL 81 (1947).

- (1) Those art objects as to the use of which the Fuehrer has reserved the decision for himself;
- (2) Those art objects which serve to complete the Reich Marshal's collection;
- (3) Those art objects and library stocks, which seem of use for the establishment of the Hohe Schule and for Rosenberg's sphere of activities;
- (4) Those art objects suitable for German museums.<sup>10</sup>

After World War II, yet another attempt was made to establish international law for the protection of cultural property. The result of this effort is the May 14, 1954 Hague Convention and Protocol for the Protection of Cultural Property in the Event of Armed Conflict.<sup>11</sup>

Article 1 of the Convention defines cultural property in the broadest possible way as "movable or immovable property of great importance to the cultural heritage of every people." Included expressly within the definition are archaeological sites, works of art, manuscripts, and monuments of architecture, art or history. Article 4 enjoins respect for cultural property and under Article 5 the parties covenant as occupying authorities to cooperate with local authorities to protect cultural property in wartime. Article 6 provides for the marking of monuments with a distinctive Convention emblem.

The Convention goes beyond the general prohibitions of the 1907 Hague Conventions in that in Article 8 it provides for specially protected refuges for cultural property which are to be immune from attack as long as they are not used for military purposes. The Convention regulations provide for the registration with the United Nations Educational, Scientific and Cultural Organization [UNESCO] of refuges, centers containing cultural property, and other immovable cultural monuments. Opponents may object to the registration on the grounds that no cultural property is involved or that the refuge is being used for military purposes.

The Protocol addresses itself to the exportation of cultural property from occupied territory. Each High Contracting Party agrees to prevent such exportation from territory occupied by it, to take cultural property into custody, to return illegally exported cultural property at the close of hostilities, and never to retain cultural property as reparations.

The United States has not become a party to the Convention. However, all of the nations immediately involved in the Arab-Israeli conflict (Egypt, Jordan, Syria, Lebanon and Israel) as well as Turkey and Cyprus have ratified the Convention and Protocol.<sup>12</sup>

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<sup>10</sup> *Id.* at 546.

<sup>11</sup> 249 U.N.T.S. 215 (1956). Entered into force, Aug. 7, 1956.

<sup>12</sup> After the 1969 fire in the Al Aqsa Mosque in Jerusalem, the United States urged, in the U.N. Security Council, use of the machinery provided by the 1954 Hague Convention instead of the condemnation of Israel which finally resulted. 61 DEPT STATE BULL. 307 (1969).

The Convention's success has been minimal. In 1970, attempts were made to persuade the nations involved in the Cambodian conflict to abide by the terms of the Convention for the sake of the great monuments of Khmer Art such as Angkor Wat. The attempt was unsuccessful. Of the nations involved, only Cambodia was a party to the Convention.<sup>13</sup>

In summary, the 1907 Hague Conventions, the 1935 Roerich Pact and the 1954 Hague Convention all provide for the protection of cultural property in wartime. These laws do not regulate many situations which are certain to arise. For example, none of the existing laws deal with interference with cultural property in occupied territory, short of destruction or removal. Do scholars who accompany occupying forces have the right to excavate archeological sites or to photograph objects and then publish the photographs?

Even though there are gaps in the coverage, it is clear that the laws now in force offer reasonable and workable schemes for preventing the destruction or looting of art in wartime. The central problem, of course, is not the utility of the framework, but its enforcement.

### *The Illicit International Trade In Art*

While in war art has belonged to the victors, in peace it has belonged to the rich, both individuals and nations. The international trade in antiquities is not new. In the early nineteenth century Lord Elgin was one of its most successful practitioners. Since World War II, there has been an enormous increase in the demand for art, admired for both its aesthetic and its investment qualities. The demand has been concentrated in the industrialized nations of the west: in Japan, the United States and Western Europe. The supply of art, however, lies in archaeologically rich, but economically poor, nations such as Turkey and Mexico. While a certain amount of legitimate trade has taken place, restrictive laws in the countries of origin have severely limited legal exportation. Voracious markets with apparently unlimited finances, combined with poverty and ineffective, inadequately enforced laws in the source countries, have produced an art market of

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<sup>13</sup> K. MEYER, *THE PLUNDERED PAST* 207 (1973). The following nations have ratified the 1954 Hague Convention and Protocol: Egypt, San Marino, Burma, Yugoslavia, Mexico, Poland, Hungary, Bulgaria, Ecuador, USSR, Byelorussia, France, Jordan, Libya, Cuba, Czechoslovakia, Monaco, the Holy See, Syria, Romania, Israel, India, Thailand, Italy, Brazil, Netherlands, Pakistan, Iran, Nicaragua, Dominican Republic (Convention only), Liechtenstein, Lebanon, Spain (Convention only), Ghana, Belgium, Guinea, Albania, Congo (Leopoldville), Mali, Nigeria, Luxembourg, Madagascar, Gabon, Cambodia, Switzerland, Panama (Convention only), Malaya, Australia, Indonesia, Iraq, West Germany, Cyprus, Mongolia, Turkey, East Germany, Tanzania, and Sudan.

colossal proportions. A recent estimate placed the international art market, both legal and illegal, at one billion dollars a year.<sup>14</sup>

This trade is destructive of the interests of all mankind. The pillage of archaeological sites for marketable treasures obliterates information which might be obtained by scientific excavation. Once a site is destroyed by tomb robbers, it is lost forever. It cannot be reconstituted. The protection of man's cultural heritage can only be accomplished over the long run by international control of the art trade. The problem is to find the most effective means of regulation.

The problem of protecting any work of art is very complex because there are competing interests and conflicting interest groups involved.

In seeking the means to protect an art work, at least five interests should be considered.<sup>15</sup> First, there is the cultural interest in the symbolic value of an object to a society. A specific work of art may be of such great symbolic value in a culture that its loss would be irreparable.

Secondly, there is an archaeological interest in preserving sites for scientific study so that man can learn about his past. This has been a central concern in recent attempts to halt the illicit trade in antiquities. For even if an art work survives being unearthed by tomb robbers, understanding of the object and appreciation for it are greatly diminished if nothing is known of the context from which it came.

There is also an interest in preserving the integrity of a work of art, in preventing its dismemberment, so that the original artistic whole may be seen and appreciated. The relief head of a Mayan priest or an Athenian maiden, however striking, is far more impressive and comprehensible on the stele of which it forms a part than when hacked off and hung on a gallery wall.

Fourthly, there is the most basic interest in preserving the work of art from destruction. Lord Elgin should receive his due praise for protecting this interest. The sculptures which he removed to the British Museum are now in better condition than those which remain on the

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<sup>14</sup> K. MEYER, *supra* note 13, at XIV. This figure refers to the entire international art market, both legal and illegal. While the recession cut into the market somewhat, full recovery seemed on the way in 1976. 145 FINANCIAL WORLD 21 (1976), New York Times, Oct. 30, 1976, at 15, col. 1. The record price for an object of African art was paid in 1976 by the Detroit Institute of Art to a New York dealer: \$275,000 for a Grand Kongo fetish, originally brought from Africa to Europe in 1903. New York Times, Oct. 29, 1976, § c, at 16, col. 4.

<sup>15</sup> These interests are identified and discussed by John Merryman, Sweitzer Professor of Law, Stanford Law School in *The Protection of Artistic National Patrimony Against Pillaging and Theft*, in ART LAW DOMESTIC AND INTERNATIONAL 233-53 (L. Duboff ed. 1975).

Acropolis. At times it is undeniably necessary to remove a work of art in order to preserve it.<sup>16</sup>

Finally, there is an interest in providing access to the work of art. Maximum public exposure consistent with the work's safety is the ultimate goal. Protection of this interest includes cultural exchanges of art to allow people in all parts of the world to share it. This interest is violated by the concentration of art in wealthy countries.

An idea of the difficulty of the task in protecting these interests may be gained by looking at the interest groups in conflict. In the source countries, there are officials who want to protect their national patrimonies. But there are also the poor whose villages lie near unexcavated sites and who are interested in bettering their economic situation by exploiting those nearby sites. In the purchasing countries there are, on the one hand, private collectors and museum curators whose interest lies in acquiring art. On the other hand, there are scholars whose activities in the source countries may be severely restricted if art stolen from those countries continues to be purchased in the scholars' home nations. In between source countries and purchasing countries, there are the middlemen, the dealers, who may be great aesthetes, but who are primarily interested in making money.

Three basic approaches to the control of the international art trade have been evolving during the 1970's: multilateral conventions, bilateral treaties and self-regulation. The multilateral approach is exemplified by the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property.<sup>17</sup> The bilateral approach is seen in the 1971 treaty between the United States and Mexico which provides for the recovery and return of stolen archaeological, historical and cultural property.<sup>18</sup> Finally, in the United States, a fair amount of self-regulation has begun through federal court action.

The 1970 UNESCO Convention is the first concerted world-wide effort to prohibit the international trade in stolen art.<sup>19</sup> For this reason

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<sup>16</sup> Lord Elgin's activities on the Acropolis are described in AN HISTORICAL GUIDE TO THE SCULPTURES OF THE PARTHENON 9-13 (1962). The plight of the marbles on the Acropolis has recently begun to receive considerable international attention, *Air Pollution Is Termed Chief Peril to Acropolis*, New York Times, Oct. 16, 1975, at 9, col. 1; *Casts Are Replacing Real Thing to Protect Acropolis Statuary from Pollution*, New York Times, Oct. 30, 1976, at 25, col. 1.

<sup>17</sup> 10 INT'L LEG. MAT. 289 (1971), adopted by the UNESCO General Conference at its 16th Session, Paris, Nov. 14, 1970 and entered into force April 24, 1972.

<sup>18</sup> Treaty Providing for Recovery and Return of Stolen Archaeological, Historical and Cultural Properties, July 17, 1970, United States-Mexico, [1971] 22 U.S.T. 494, T.I.A.S. No. 7088.

<sup>19</sup> The 1970 UNESCO Convention was preceded by the European Convention on the Protection of the Archaeological Heritage of May 6, 1969. 8 INT'L LEG. MAT. 736 (1969). By 1974, it had been ratified by Denmark, Belgium, Switzerland, Cyprus, France, the United Kingdom, Austria (with reservations), Italy, Luxembourg, Malta, and the Holy See.

alone the Convention should be applauded. The Convention, which covers all specifically designated "cultural property" as defined by Articles 1 and 4,<sup>20</sup> has the interrelated goals of improving maintenance of the property in the countries of ownership and of banning importation of cultural property illegally exported from other countries.

In Article 5, the State Parties to the Convention undertake to set up national services, where none exist, for the protection of cultural property. In Article 14, they agree to provide adequate funding for these services. Article 6 provides for the establishment of certificates authorizing export. In Article 13(c), State Parties agree to open their courts for actions to recover stolen property brought by or on behalf of the rightful owners.

Great controversy has arisen around Article 7 (a) which is directed at controlling museum acquisitions. It reads:

The State Parties to this Convention undertake:

- (a) To take the necessary measures, consistent with national legislation, to prevent museums and similar institutions within their territories from acquiring cultural property originating in another State Party which has been illegally exported after entry into force of this Convention, in the States concerned. Whenever possible, to inform a State of origin Party to this Convention of an offer of such cultural property illegally removed from that State after the entry into force of this Convention in both States;

The phrase "consistent with national legislation" was inserted in the Convention at the urging of the United States. The Convention was ratified by the United States Senate in 1973 with the reservation that the United States understood that the Convention was not self-executing. A further reservation with regard to Article 7(a) was made:

The United States understands Article 7(a) to apply to institutions whose acquisition policy is subject to national control under existing domestic legislation and not to require the enactment of new legislation to establish national control over other institutions.<sup>21</sup>

In other words, only those museums whose acquisition policies are controlled by the federal government are subject to the restrictions

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<sup>20</sup> The Convention's definition of "cultural property" has been severely criticized. It apparently requires specific designation of each object, which would leave new archaeological finds completely outside its scope. Gordon, *The UNESCO Convention on the Illicit Movement of Art Treasures*, 12 HARV. INT'L L.J. 542-46 (1971).

<sup>21</sup> 113 CONG. REC. 13378 (1972). For a discussion of the background of the Article 7(a) reservation see Nafziger, *Article 7(a) of the UNESCO Convention in ART LAW DOMESTIC AND INTERNATIONAL* 387-94 (L. Duboff ed. 1975).



of the Convention without the enactment of national enabling legislation.<sup>22</sup>

Such legislation has repeatedly been put before the Congress.<sup>23</sup> It contemplates creating a panel of experts, appointed by the President of the United States, which would designate categories of archaeological and ethnological objects which are endangered. The President could thereupon prohibit the importation into the United States of such items for which there is no certificate from the state of origin authorizing export as provided in Article 6 of the UNESCO Convention.

This enabling legislation has stirred bitter controversy within the scholarly community.<sup>24</sup> Opponents argue that unilateral action by the United States would not save the world's artistic heritage when there is no assurance that other nations will conform with the UNESCO Convention. This argument does not recognize that the United States is one of the world's largest art markets and that persistent inaction by the United States will almost certainly encourage the illegal and uncontrolled pillaging of the cultural patrimony of mankind.

Some argue that the enabling legislation should make provision for the exchange of cultural property between nations. Often, museums in archaeologically rich nations bulge with duplicate pots and statues while restrictive local laws prohibit or limit in an extreme degree any sale or export of them.<sup>25</sup> Some sort of reciprocity would be helpful. If illegal channels are to be closed off, then legitimate channels

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<sup>22</sup> A number of private American museums and professional organizations of scholars and museum curators have issued statements of voluntary compliance with the terms of the UNESCO Convention. They include the Association of Art Museum Directors, the American Anthropological Association, the Society for American Archaeology, the Field Museum, the University of California at Berkeley, Harvard University, the Brooklyn Museum, the Arizona State Museum, the Smithsonian Institute, the Archaeological Institute of America and the University Museum of the University of Pennsylvania. See K. MEYER, *supra* note 13, at 253, and Duboff, *supra* note 15, at 567-95. Some of the most important American museums, such as the Metropolitan Museum of Art in New York and the Boston Museum of Fine Arts, have not indicated an intention to comply with the Convention's prohibition of illegally exported acquisitions.

<sup>23</sup> The most recent version was H.R. 14171, introduced on June 3, 1976 by Rep. William Green (Dem. -Pa.). It died in the Ways and Means Committee at the end of the 94th Congress.

<sup>24</sup> The opposing sides in the debate over enabling legislation are argued in Pomerance and Muscarella, *Antiquities Legislation Pending in Congress*, 29 *ARCHAEOLOGY* 274 (1976).

<sup>25</sup> A useful summary of the protective legislation of the nations of the world is provided in K. MEYER, *supra* note 13, at 240-53. It has been suggested that overly restrictive export controls in poor countries can materially add incentive for tomb robbing. Where legal exportation is made very difficult, resort will be made to illegal exportation where high risks result in high costs. Once prices in the purchasing countries reach a certain level, the art becomes attractive to investors who enter the market and drive up prices even further. Once this stage has been reached, there is enough money in the market to greatly increase the incentive to pillage sites in search of marketable objects. Seabrook, *Legal Approaches to the Trade in Stolen Antiquities*, 2 *SYRACUSE J. INT'L L. & COM.* 51, 65 (1974).

should be cleared. In March, 1976, a meeting in Paris produced a draft resolution on the International Exchange of Cultural Property which was to be presented to the United Nations General Assembly in November, 1976.<sup>26</sup> The resolution stresses "the circulation of cultural property as a powerful means of promoting mutual understanding and appreciation among nations." Detractors point out that the archaeologically rich nations, Egypt, Mexico and Greece, did not attend the meeting.

Another line of attack on the 1970 UNESCO Convention is the assertion that urbanization rather than tomb-robbing is the major cause of destruction of cultural treasures in the world today. This argument is not on point for it fails to recognize that substantial destruction is in fact carried out by art plunderers. A resolution drawn up in Warsaw by forty-three countries which was to be presented to the 1976 General Assembly recommends the establishment of international standards for the preservation of historic towns, quarters and sites, and their integration in urban planning.<sup>27</sup>

Whether the UNESCO Convention will be effective remains to be seen. However, it is encouraging that long overdue action is finally being taken.<sup>28</sup>

In the area of bilateral control of international art trade, the prime example is the United States—Mexico treaty ratified in 1971, which provides for the recovery and return of stolen archaeological, historical and cultural property of "outstanding importance." In 1972, Congress passed enabling legislation prohibiting the importation into the United States of illegally exported pre-Columbian monumental sculpture.<sup>29</sup> No prosecutions under this legislation have yet occurred.

<sup>26</sup> 29 *ARCHAEOLOGY* 206 (1976).

<sup>27</sup> 29 *UNESCO COURIER* 33 (April, 1976).

<sup>28</sup> The 1970 UNESCO Convention has been ratified without reservations by Ecuador, Bulgaria, Nigeria, Central African Republic, the Cameroons, Khmer Republic, Mexico, Yugoslavia, Niger, Argentina, East Germany, Panama, Poland, Kuwait, Syria, Tunisia, and Iran. U.N. General Assembly Resolutions have repeatedly urged ratification of the Convention: G.A. Res. 3026A, 27 U.N. GAOR Supp. 30 at 71, U.N. Doc. A/8730 (1972); G.A. Res. 3391, 30 U.N. GAOR Supp. 34 at 4, U.N. Doc. A/10034 (1975); G.A. Res. 31/40, 31 U.N. GAOR Supp. — at —, U.N. Doc. A/—— (1976). In addition, the General Assembly adopted a resolution, sponsored by Zaire, calling on nations to restore expropriated art, especially where the expropriated objects had been taken away during colonial rule. G.A. Res. 3187, 28 U.N. GAOR Supp. 30 at 9, U.N. Doc. A/9030 (1973). Another multilateral agreement concerning cultural property, such as ancient shipwrecks found on the sea bed, was to be considered in the Third Conference on the Law of the Sea, held at the United Nations in 1976. Under proposed Article 19, all objects more than 50 years old which are found under the sea should be disposed of for the benefit of the international community with preferential rights given to the countries of origin. 29 *ARCHAEOLOGY* 131 (1976).

<sup>29</sup> Act of Oct. 27, 1972, Pub. L. No. 92-587, tit II, §§ 201-05, 86 Stat. 1297, 19 U.S.C. §§ 2091-95 (Supp. V 1975). Importation of Pre-Columbian Monumental or Architectural Sculpture or Murals.

Self-regulatory activity is on the increase in the United States. Recent actions in the Federal courts have already made importation of an illegally exported art object criminally actionable under the National Stolen Property Act,<sup>30</sup> if it can be shown that the object was stolen from one who held title to the object in the country of origin.

Federal involvement in protecting art began in 1970 when Harvard archaeologist Ian Graham, whose Mexican assistant was murdered by tomb robbers in Mexico, discovered that a group of stelae studied by him had been stolen and shipped to the United States. At his urging, Federal authorities stepped in and successfully prosecuted the California dealer, Clive Hollinshead, who had obtained one of the stelae, for receiving stolen goods.<sup>31</sup> After the criminal trial, the United States filed an *in rem* action against the stele itself to declare it forfeit. Guatemala filed a petition for remission of forfeiture in its favor. The actions are still pending. Another of the stelae was found in the home of Harry Brown in Helena, Arkansas. He was convicted of transporting stolen goods in interstate commerce and was fined \$2500 and placed on probation for three years.<sup>32</sup>

The most recent case, *United States v. McClain*,<sup>33</sup> involves small pre-Columbian objects which fall outside the protection that 19 U.S.C. §§ 2091-2095 has given monumental pre-Columbian sculpture since 1972. In *McClain*, five defendants were convicted of conspiring to transport and receive through interstate commerce pre-Columbian terra cotta figurines, pottery, beads and stucco pieces. The Fifth Circuit reversed on appeal because it found prejudicial error in an erroneous instruction to the jury that Mexico had acquired title to all archaeological objects within its jurisdiction by national declaration as early as 1897. The court made a detailed review of Mexican antiquities laws and found that Mexico had effectively acquired title only in 1972. But the court left no doubt that if the objects were found to have been exported illegally after the Mexican declaration of national ownership, the defendants would be guilty of violation of the National Stolen Property Act [NSPA]. The court rejected the defendants' contention that affirmance of the conviction would condone unwarranted federal enforcement of foreign law.

Were the word ["stolen" in the NSPA] to be so narrowly construed as to exclude coverage, for example, with respect to pre-Columbian artifacts illegally exported from Mexico after the effective date of the 1972 law, the Mexican government would be denied protection of the Act after it had done all it reasonably could do—vested itself with ownership—to protect its interest in the

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<sup>30</sup> 18 U.S.C. §§ 2314-15 (1970).

<sup>31</sup> *United States v. Hollinshead*, 495 F.2d 1154 (9th Cir. 1974).

<sup>32</sup> K. MEYER, *supra* note 13, at 33; Seabrook, *supra* note 25, at 60 n.45.

<sup>33</sup> *United States v. McClain*, 545 F.2d 988 (5th Cir. 1977).

artifacts. This would violate the apparent objective of Congress: the protection of owners of stolen property.<sup>34</sup>

The illegal export of an object alone will not make its transport and receipt criminally actionable under *McClain*. "We hold that a declaration of national ownership is necessary before illegal exportation of an article can be considered theft, and the exported article considered stolen within the meaning of the National Stolen Property Act."<sup>35</sup>

If the country of origin has made a simple declaration of national ownership and the object can be shown to have been illegally exported since the declaration was made, then *McClain* as it now stands throws the door wide open for prosecution of those who transport and receive the object. Even though *McClain* may be further modified on appeal, the case should thoroughly frighten art dealers and museum curators. As soon as foreign nations become aware of its implications, there should be an international spate of declarations of ownership. There may soon be a public outcry generated by the professional art collecting community for Congressional action to narrow the scope of the National Stolen Property Act. But for the moment, as often happens, debate in the legislative branch of government about the appropriate measure to deal with stolen art has been overtaken by action in the courts. Implementing legislation for the UNESCO Convention may soon become partially unnecessary if federal enforcement of stolen property laws continues its trend toward stringency.

MICHAEL W. TAYLOR

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<sup>34</sup> *Id.* at 1001.

<sup>35</sup> *Id.* at 1000.